

## Decision

### Dispute Codes:

CNR, OLC, ERP, FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy, for an Order requiring the Landlord to comply with the Residential Tenancy Act (Act), for an Order requiring the Landlord to make emergency repairs, and to recover the filing fee from the Landlords for the cost of this Application for Dispute Resolution. At the hearing the Tenant withdrew the application for an Order requiring the Landlord to comply with the Act and to make emergency repairs, as the Tenant intends to vacate the rental unit on March 15, 2009.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, should be set aside, and whether the Tenants are entitled to recover the filing fee from the Landlords for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Agent for the Landlord and the female Tenant agree that this tenancy began on February 01, 2008 and that the Tenants are required to pay monthly rent in the amount of \$750.00.

The Agent for the Landlord and the female Tenant agree that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of January 22, 2009, was personally served on the Tenants on January 12, 2009. The Notice indicated that the Notice would be automatically cancelled if the Landlord received \$750.00 within five days after the Tenant is assumed to have received the Notice. The Notice also indicated that the Tenant is presumed to have accepted that the tenancy is ending and

that the Tenant must move out of the rental by the date set out in the Notice unless the Tenant files an Application for Dispute Resolution within five days.

The Tenants filed an Application for Dispute Resolution seeking to dispute the Notice on January 15, 2009.

The Agent for the Landlord and the female Tenant agreed that the Landlord and the male Tenant had a conversation at the end of January regarding the unpaid rent, although neither the female Tenant nor the Agent for the Landlord were present during that conversation.

The Agent for the Landlord is of the understanding that the male Tenant paid \$250.00 in cash for the outstanding rent for January and authorized the Landlord to retain the \$500.00 security deposit as payment for rent in January. She believes that the Landlord and the male Tenant agreed that the tenancy would continue until the end of February providing the Tenants paid rent for February. She stated that the Tenants did pay their rent for February, albeit in two instalments.

The female Tenants is of the understanding that the male Tenant paid \$250.00 in cash for the outstanding rent for January and authorized the Landlord to retain the \$500.00 security deposit as payment for rent in January. She believes that the Landlord and the male Tenant agreed that the tenancy would continue until the Tenants were prepared to move into the home they were in the process of purchasing. She agrees that they paid their rent for February in two instalments.

The Agent for the Landlord and the female Tenant agree that the Tenants have served written notice of their intent to vacate the rental unit on March 15, 2009.

### Analysis

The evidence shows that the Tenants did not pay rent for January when it was due. The evidence shows that the Landlord served the Tenants with a Ten Day Notice to End Tenancy on January 12, 2009, which was effective on January 22, 2009.

The evidence shows that the Landlord received \$250.00 from the Tenants sometime near the end of January as partial payment for January's rent. The evidence also shows that the Landlord agreed to retain the security deposit to lieu of the outstanding rent from January.

In view of the contradictory evidence provided by the Agent for the Landlord and the female Tenant regarding the terms of continuing the tenancy after rent was accepted for January of 2009, I find that the Landlord submitted insufficient evidence to establish that the rent payments for January and February were being accepted for use and

occupancy only until the end of February. In reaching this conclusion I considered the following:

- The Landlord, who is the party who made the agreement to continue the tenancy, did not attend the hearing to confirm that he only agreed to extend the tenancy until the end of February
- The Landlord, who is the party who made the agreement to continue the tenancy, did not attend the hearing to confirm that he advised the Tenants that the payments for January and February were being accepted for use and occupancy only and that the payments did not reinstate the tenancy
- The Landlord did not produce any written evidence to establish that the rent payments for January and February did not serve to reinstate the tenancy
- The female Tenant contends that the male Tenant made an agreement to extend the tenancy until they were able to move into the home they were purchasing
- The Tenant served written notice that ends the tenancy on March 15, 2009, which indicates that they believed the tenancy had been reinstated.

### Conclusion

After considering all of the written and oral evidence submitted at this hearing, I find that there are reasonable grounds to believe that this tenancy was reinstated. On this basis, I set aside the Notice to End Tenancy and I find that the tenancy will continue until it is ended in accordance with the *Act*.

I find that the Tenants application has some merit, and I find that the Tenants are entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. On this basis I will be granting the Tenant a monetary Order in the amount of \$50.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: February 19, 2009

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